

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RONALD STOCKTON,	:	Civil No. 1:21-CV-00029
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN WETZEL, <i>et al.</i> ,	:	
	:	
Defendants.	:	Judge Jennifer P. Wilson

ORDER

Before the court is Plaintiff's motion for reconsideration of the court's March 30, 2022 order adopting United States Magistrate Judge Martin C. Carlson's report and recommendation. (Doc. 30.) In his motion, Plaintiff argues, with support from exhibits, that he did not receive the report and recommendation in time to file timely objections. (*Id.*) Although Defendants oppose the motion asserting that it is untimely, Doc. 40, the court will give Plaintiff the benefit of the doubt. From his motion and exhibits, it is plausible that Plaintiff did not receive the report and recommendation until March 29, 2022, which was after the objection deadline. Accordingly, **IT IS ORDERED THAT** Plaintiff's motion for reconsideration is **GRANTED** and the court will construe the substantive arguments raised in his motion as objections to the report and recommendation.

Because the objections are fully briefed, the court can rule on the report and recommendation again. *See* Docs. 30, 31, 40, 44. Judge Carlson's report

recommends that Defendants’ motion to dismiss be granted in part and denied in part. (Doc. 27.) Specifically, Judge Carlson recommends that the motion to dismiss be granted as to: (1) Plaintiff’s equal protection claim; and (2) Plaintiff’s First Amendment retaliation claim and Eighth Amendment claim against Defendants Wetzel, Smith, Stamm, McGinley, Logan, Patraw, Nicklow, Chismar, Neitz, and Superintendent Assistant Kelley. (*Id.*) However, Judge Carlson opines that the motion to dismiss should be denied with respect to Defendants Kepp, Jordan, Yoder, Drucis, Kimmel, Anthony, Spohr, and Kitchen Manager Kelley. (*Id.*) Plaintiff filed general objections that re-raise the same arguments and express disagreement with Judge Carlson’s opinions. (Docs. 30, 31, 44.) Defendant filed a brief in opposition; thus, the objections are ripe for review. (Doc. 40.)

When a party raises only general objections to a report and recommendation, a district court is not required to conduct a de novo review of the report and recommendation. *Goney v. Clark*, 749 F.2d 5, 6–7 (3d Cir. 1984). “To obtain de novo determination of a magistrate’s findings by a district court, 28 U.S.C. § 636(b)(1) requires both timely and specific objections to the report.” *Id.* at 6. Thus, when reviewing general objections to a report and recommendation, the court’s review is limited “to ascertaining whether there is ‘clear error’ or ‘manifest injustice’” on the face of the record. *Boomer v. Lewis*, No. 3:06-CV-00850, 2009 WL 2900778, at *1 (M.D. Pa. Sept. 9, 2009).

The court has reviewed Judge Carlson's report and recommendation and finds no clear error or manifest injustice on the face of the record. While Plaintiff's arguments show that he is displeased with the report and recommendation, his complaints are nothing more than a rehashing of the arguments previously considered by the court. Accordingly, **IT IS ORDERED THAT:**

- 1) The report and recommendation, Doc. 27, is **ADOPTED** in its entirety.
- 2) Plaintiff's objections, Doc. 30, are **OVERRULED**.
- 3) Defendants' motion to dismiss, Doc. 21, is **GRANTED IN PART AND DENIED IN PART AS FOLLOWS:**
 - a. The motion is **GRANTED** as to Plaintiff's equal protection claim, and that claim is **DISMISSED**;
 - b. The motion is **GRANTED** as to Plaintiff's First and Eighth Amendments claims, and those claims are **DISMISSED** as to Defendants Wetzel, Smith, Stamm, McGinley, Logan, Patraw, Nicklow, Chismar, Neitz, and Superintendent Assistant Kelley;
 - c. Defendants Wetzel, Smith, Stamm, McGinley, Logan, Patraw, Nicklow, Chismar, Neitz, and Superintendent Assistant Kelley are **DISMISSED** from this case;
 - d. The motion is **DENIED** in all other respects.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Court Judge
Middle District of Pennsylvania

Dated: July 25, 2022